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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,056	02/03/2004	Wendy Michele Kirsh	11845*1	3932
23416	7590	12/06/2004	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899			LAVINDER, JACK W	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/772,056	KIRSH, WENDY MICHELE <i>W.W.</i>	
	Examiner	Art Unit	
	Jack W. Lavinder	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 September 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson, 4879882.

Regarding Claims 1, 2 and 7-8, Johnson et al. disclose an apparatus for entertaining and pacifying a young child (Figure 7) comprising:

- a chain (24) that is securable and suspendable around the neck of a user
- a retaining mechanism (25) connected to the neck device
- an age appropriate interchangeable entertainment object (Figure 7) interchangeably and securely connected to the retaining mechanism within easy reach of a young child being held by the user, the interchangeable entertainment object being made of colors, materials and shapes that entertain and pacify a young child

Regarding claims 3, 4 and 5, Johnson discloses an interchangeable entertainment object would attract children of all ages including less than three months to more than nine months.

Regarding claim 9, Johnson discloses the interchangeable entertainment object comprises shapes (Figure 7), pictures (Figure 4), and letters (Figure 7) that can be used as a learning device (column 1, lines 45-48).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson, 4879882. Johnson fails to explicitly disclose an interchangeable object having contrasting primary colors. However, Johnson recognizes that the color of the objects may be selected to match a wearer's ensemble (col. 3, lines 1-2 and col. 1, line 14) and this obviously could include combinations of contrasting primary colors. Therefore, it would have been obvious to include primary contrasting colors on Johnson's interchangeable object in order for the object to match the wearer's clothing ensemble for that day or evening.

Response to Arguments

5. Applicant's arguments filed 09/29/04 have been fully considered but they are not persuasive.

6. The applicant argues on pg 6 last paragraph-page 7, first paragraph, that Johnson fails to disclose an interchangeable entertainment object that is age

appropriate and made of colors, materials, and shapes that entertain and pacify a young child. The examiner respectfully disagrees. The phrases in the claims directed to “age appropriate”, “entertain and pacify the young child”, “promotes chewing”, and “visual stimulus to the child” are all borderline indefinite language. All these phrases are relative to the individual child. Something that stimulates one child will not do the same for a different child. Something that pacifies one child will not do the same to a different child. Also, what exact is meant by pacify a young child? Does this mean the child stops crying or just reduces their volume of crying? How does one know when an object is stimulating a child? Is it when their eyes stay focused on the object for more than 10 seconds? Who decides what is age appropriate? Many parents have very different definitions of what is an age appropriate toy for their child.

7. Assuming that the language is definite, the language is considered functional language, i.e., the structure of the device performs the function of “entertaining and pacifying a young child.” If the structure of the prior art can perform this function, than the claim limitations are met by the prior art. Clearly, the shapes, colors, and sounds the pendant makes in Johnson can easily fulfill the functions of entertaining and pacifying a child. Thus, the structural and functional limitations of the claims are met by Johnson’s device.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 703-308-3421. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack W. Lavinder

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Primary Examiner
Art Unit 3677

11/29/04